In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:	)	
	)	Chapter 13 Case
TOMMIE L. ABBOTT	)	
	)	Number 01-21334
Debtor	)	

MEMORANDUM AND ORDER ON TRUSTEE'S OBJECTION TO EXEMPTION

Debtor Tommie L. Abbott ("Debtor") filed his Chapter 13 case September 4, 2001. The plan provides for an exemption in his residence in the amount of $10,600.00. The Chapter 13 Trustee ("Trustee") objects on the basis that this amount exceeds the Georgia statutory limit for a residence exemption. In order to provide for disbursement of funds, the Court confirmed the plan on February 5, 2002, subject to subsequent modification, and took the exemption question under advisement. Jurisdiction over this matter, a core proceeding under 28 U.S.C. § 157(b)(2)(B), is vested in this Court pursuant to 28 U.S.C. § 157(a).

CONCLUSIONS OF LAW

Disposition of this matter rests upon determination of the effects of statutory exemptions provided debtors in bankruptcy under the law of Georgia.[1] In Georgia, an individual debtor may exempt from the bankruptcy estate "[t]he debtor's aggregate interest, not to exceed $10,000.00 value, in . . . property that the debtor . . . uses as a residence." O.C.G.A. § 44-13-100

[1] The Bankruptcy Code permits an exemption in a debtor's interest in property used as a residence according to applicable law of the debtor's domicile. 11 U.S.C. § 522 (b)(1) & (d). In this case, Debtor is a resident of Georgia, which has opted out of the exemption amounts set in the Bankruptcy Code.

(a)(1). Another exemption is available for "[t]he debtor's aggregate interest, not to exceed $600.00 in value plus any unused amount of the exemption, not to exceed $5,000, provided under paragraph (1) of this subsection, in any property."[2] Id. § 44-13-100(a)(6). Here, Debtor's plan provides for a combined exemption of $10,600.00 claimed under subsections (a)(1) and (a)(6), and Trustee objects on the basis that any exemption in a debtor's residence is absolutely limited to the amount specified in subsection (a)(1). Thus, the issue is whether a debtor may aggregate the maximum exemption allowed under subsection (a)(1) and the $600.00 portion of the exemption provided in subsection (a)(6).

Where the residential property to which the (a)(6) exemption is sought to be applied is a debtor's interest in his residence for which he also claims the full amount of the exemption provided under subsection (a)(1), the intended import of subsection (a)(6) is unclear. Debtor's reading of subsections (a)(1) and (a)(6) would yield the following construction as applied in the present situation: a debtor may exempt his equity in his personal residence up to $10,000.00, to which sum he may then add a one-time "wildcard" exemption in the amount of $600.00, to which he may also add up to $5,000 of any unused portion of his (a)(1) exemption. Read Trustee's way, however, the appropriate interpretation of the two subsections is: a debtor may exempt his equity in his personal residence up to $10,000.00, to which amount he may add an additional exemption in an amount not exceeding the sum of the one-time $600.00 exemption and any unclaimed (a)(1) exemption amount up to $5,000, provided that the sum of that sum and the exemption amount under (a)(6) does not exceed $10,000.

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[2] "Any property" includes "real property," in that subsection (a) (6) does not qualify the "any property" to which the so-called "wildcard" exemption may attach. *See, e.g.*, Vaillancourt v. The Granite Group (In re Vaillancourt), 260 B.R. 66, 69 (Bankr. D.N.H. 2001); In re Miller, 198 B.R. 500, 504 (Bankr. N.D. Ohio 1996); In re Christie, 139 B.R. 612, 614 (Bankr. D. Vt. 1992).

Trustee's position is not without merit. A portion of the "wildcard" exemption is expressly conditioned upon availability of at least a partially unclaimed exemption under (a)(1), and subsection (a)(6) "is designed to prevent the exemption statute from discriminating unfairly against nonhomeowners," McGuire v. Landmark Fin. Servs. (In re McGuire), 132 B.R. 803, 806 (Bankr. M.D. Ga. 1987), *aff'd* 132 B.R. 807 (S.D. Ga. 1989), *quoted in* In re Ambrose, 179 B.R. 982, 985 (Bankr. S.D. Ga. 1995) (Davis, C.J.). Notably, however, the statute does not expressly forbid tacking on the $600.00 exemption amount provided in (a)(6) in order to augment the $10,000.00 exemption in (a)(1).

In Vaillancourt v. The Granite Group (In re Vaillancourt), 260 B.R. 66 (Bankr. D.N.H. 2001), the court addressed a virtually identical legal issue. *See* id. at 68 (addressing whether debtor was entitled to use state statutory wildcard exemption in addition to full statutory amount of exemption available for homestead property). The court stated:

> [Defendant's] argument appears to assume that the Debtor is using the wild card exemption to augment the homestead exemption provided under [the state statute]. However, the Debtor is not changing the amount of his homestead exemption, he is simply applying two separate exemptions, the homestead and the wild card exemptions, against the same asset. . . . The plain language of [the statutory provision] imposes limitations on the use of the homestead exemption created under [that provision], but does not apply to any other exemption created under any other law.
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> . . . . [T]he state wild card exemption may be stacked with other applicable exemptions on any property in order to provide debtors with an additional amount which they

> can use to exempt "any property" that is not otherwise exempt. Such property may include property for which no other exemption is available as well as property which may be partially exempt under other provisions of applicable non-bankruptcy law.

Id. at 70-71. *But see* In re Christie, 139 B.R. 612, 613 (Bankr. D. Vt. 1992) (resolving issue as to dollar amount available to debtor by applying ruling of highest state court that only "unused" amounts are available).

Trustee contends that the "not to exceed" language in subsection (a)(1) should control as an absolute cap on the amount that Debtor may claim as an exemption in his residence. Notwithstanding identical "not to exceed" language in subsection (a), *see* § 44-13-100(a)(4),[3] however, this Court approved the "wildcard" exemption in In re Ambrose even though the effect was to allow an exemption exceeding the applicable statutory exemption cap of (a)(4), *see* 179 B.R. at 985; *accord* McGuire, 132 B.R. at 807 (affirming, adopting, and incorporating bankruptcy court's opinion allowing aggregation of maximum exemption for household furnishing and remaining $400 value under "catch all" provided in (a)(6)).

Without benefit of Georgia precedent to the contrary, the reasoning in Vaillancourt is persuasive. Here, Debtor is not changing the amount of his residence exemption; he is, rather, simply applying two separate exemptions against the same asset, *see*

[3] Subsections (3), (5), (9), & (11) (D) also contain "not to exceed" language.

Vaillancourt, 260 B.R. at 70 (reaching same conclusion). Those exemptions are the exemption provided in § (a)(1) and the portion of the wildcard exemption available to him in § (a)(6), and that asset is his residence.

I therefore hold that a debtor in bankruptcy may aggregate the maximum exemption allowed under O.C.G.A. § 44-13-100 (a)(1) and the $600.00 portion of the "wildcard" exemption provided in § (a)(6). Here, Debtor may aggregate his $10,000.00 exemption under (a)(1) with the $600.00 allowed under (a)(6) in order to exempt $10,600.00 of his interest in his residence.

O R D E R

Trustee's objection to Debtor's claimed exemption in his residence pursuant to O.C.G.A. § 44-13-100(a)(1) and (a)(6) IS OVERRULED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of May, 2002..